

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA  
Civil No. 07-122 (DSD/SRN)

Robert S. Visina,

Plaintiff,

v.

**AMENDED ORDER**

Wedge Community Co-op, Inc.,

Defendant.

This matter is before the court upon defendant's objections to the report and recommendation of Magistrate Judge Susan Richard Nelson dated August 10, 2007. In her report, the magistrate judge recommends that plaintiff's motion to remand be granted.

The court reviews the report and recommendation of the magistrate judge de novo. 28 U.S.C. § 636(b)(1)(C); D. Minn. LR 72.2(b). Defendant objects that the magistrate judge's opinion failed to account for the effect of Lundeen v. Canadian Pacific Railway, 447 F.3d 606 (8th Cir. 2006), in its discussion of complete preemption. To the contrary, the court finds that the report and recommendation adequately addresses Lundeen and expertly discusses the often-misunderstood issue of complete preemption. Lundeen is not controlling precedent because it concerns the Federal Railroad Safety Act and not the Federal Omnibus Transportation Employer Testing Act ("FOTETA") at issue in this case. Further, the Supreme Court has identified only three federal statutes in which complete preemption is applicable - the Labor

Management Relations Act, the Employee Retirement Income Security Act and the National Bank Act - and FOTETA is not one of them. See Beneficial Nat'l Bank v. Anderson, 539 U.S. 1, 6-10 (2003). Accordingly, complete preemption does not provide a basis for the removal of plaintiff's state law claims, and the action must be remanded to state court. In sum, the court concludes that the report and recommendation of the magistrate judge is well reasoned and correctly disposes of plaintiff's motion. Therefore, the court adopts the report and recommendation in its entirety.

Accordingly, **IT IS HEREBY ORDERED** that plaintiff's motion to remand to state court [Doc. No. 9] is granted.

Dated: October 1, 2007

s/David S. Doty  
David S. Doty, Judge  
United States District Court